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SCOTT C HARRIS P O BOX 927649 SAN DIEGO, CA 92192			NGUYEN, KIMBERLY D	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

JUN 15 2005

GROUP 2800

Application Number: 09/690,074
Filing Date: October 16, 2000
Appellant(s): HARRIS, SCOTT C.

Scott Harris
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 31, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of Claims*

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 27-34, 38 and 40-43.

Claims 44-46 are not appealed.

Claims 1-26, 35-37, 39 and 47-48 have been cancelled.

It has been noted by the examiner that the appellant's brief includes a typographical error, e.g., claims 26-34 should be annotated with claims 27-34.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Claimed Subject Matter*

The summary of claimed subject matter contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the grounds of rejection is correct.

(7) *Claims Appendix*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Evidence Relied Upon*

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No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 27, 29-33, 38, 40, 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitroda (US 5,590,038) in view of Nathans (US 4,972,476).

Re claims 27, 38 and 40: Pitroda teaches an electronic credit card (i.e., universal electronic transaction card or "UET" card), comprising:

a credit card housing having a front surface showing a credit card number (1XXX YYY2 in fig. 14), and having electronic circuitry coupled to the housing, associated with a credit card account based on the credit card number (figs. 3-4; col. 4, lines 35-60; col. 11, lines 12-28; col. 13, lines 29-37);

a communication device (33 in fig. 3), also coupled with the housing, and coupled with the electronic circuitry in the housing, communicating information to and from the electronic circuitry using a short range RF protocol (figs. 3-4; col. 11, lines 12-28; col. 9, lines 54-67);

wherein the electronic circuitry includes a memory (RAM/ROM/non-volatile-RAM in fig. 3) storing an individual characteristic representative of an authorized user of the credit card (403, 404, 405, 406 in fig. 4; col. 11, lines 40-57);

further comprising a display (30 in fig. 3) which displays the individual characteristic, wherein the individual characteristic is a user's picture (406 in fig. 4 including photographs of the user, fingerprints or other forms of identification; see col. 11, lines 54-56) (fig. 4; col. 11, lines 39-58; col. 3, lines 34-61; col. 4, lines 35-60).

Although, Pitroda teaches the individual characteristic is a user's picture/fingerprints, which is stored in the memory (col. 11, lines 54-56), and the display (30), which displays the user's **signature** when a transaction is requested (fig. 9; col. 3, lines 62-65; col. 13, lines 22-37).

Pitroda fails to teach or fairly suggest wherein the user's **picture** is displayed on the display.

Nathans teaches an ID card having the card bearer's picture thereon to restrict access of the card bearer for authenticating purposes (see abstract; col. 2, line 5+; and col. 2, lines 35+).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to manipulate the display that which displays the user's signature as taught by Pitroda to displaying the user's picture in order to positively identify the user through the picture. Accordingly, such modification would have been an obvious expedient from Pitroda's teachings.

Re claims 29-33 and 42-43: Pitroda teaches the credit card further comprising an internal source of power (e.g., the battery 30; col. 11, line 27, col. 9, line 37) and/or the external source (e.g., external unit, col. 9, line 37 as set forth in claim 30) for the electronic circuitry and communication device (57 in fig. 5; col. 12, lines 25-34) (col. 3, lines 55-61; col. 4, lines 21-34; col. 9, lines 31-45).

2. Claims 28 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitroda as modified by Nathans as applied to claim 27 above, and further in view of Makipaa et al. (US 6,394,341; hereinafter "Makipaa"). The teachings of Pitroda as modified by Nathans have been discussed above.

Although, Pitroda teaches that his electronic credit card includes a RF communication device, Pitroda as modified by Nathans fails to specifically teach or fairly suggest that the RF communication includes Bluetooth protocol.

Makipaa et al teaches an electronic smart card including the Bluetooth protocol (see col. 3, lines 4-51).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further integrate the Bluetooth protocol as taught by Makipaa to the teachings of Pitroda as modified by Nathans due to the fact that the Bluetooth protocol uses radio transmissions to transfer both the voice and data in a real-time with various provisions to minimize communications interference and to preserve the datastream security. Accordingly, such modification of employing the Bluetooth protocol would have been an obvious extension as taught by Pitroda et al for secure data transmission with less interference effects between the electronic credit card and the reader per se. Furthermore, such modification would prevent an unauthorized operator from intercepting the data during the transaction(s).

3. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pitroda as modified by Nathans as applied to claim 27 above, and further in view of Teicher et al. (US 6,257,486; hereinafter "Teicher"). The teachings of Pitroda as modified by Nathans have been discussed above.

Pitroda teaches the front surface of the credit card having the credit card number (fig. 14).

Pitroda fails to specifically teach the credit card number is raised letters.

Teicher teaches an electronic credit card, wherein the front surface includes raised lettering indicating the credit card number (col. 1, line 67 through col. 2, line 5; and col. 2, line 55 through col. 3, line 5).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to employ the well-known raised/embossed lettering in the surface of the credit card as taught by Teicher to the teachings of Pitroda as modified by Nathans in order to provide a smart card with manner similar to that of ordinary charge cards (col. 2, line 1).

(10) Response to Argument

1. In response to appellant's argument that "The claimed front surface with a credit card number facilitates using this card in legacy applications, that is with **non-electronic credit card infrastructure**." (see page 4, lines 7-8), the examiner respectfully requests the appellant to further review the claimed limitation of claim 27 wherein the phrase "a credit card housing having a front surface showing a credit card number", which does not specifically include a "non-electronic credit card infrastructure" thereon. Pitroda discloses a front surface having a credit card number (1XXX YYY2) thereon (see Pitroda, fig. 14; col. 13, lines 33-37). Therefore, given its broadest reasonable interpretation of the instant claimed limitation, e.g. "a credit card housing having a front surface showing a credit card number", Pitroda anticipates the claimed invention.

2. In response to appellant's argument that "A person having ordinary skill in the art would not consider that Pitroda's teaching of a memory storing various data could be modified by Nathan's teaching of a scrambled analog image printed on a credit card... Moreover,... nowhere is there any teaching or suggestion in either reference, or in the combination thereof, that the

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display displays the user's picture "**when a transaction is requested**" as required by claim 27." (page 5, lines 2-9), the examiner respectfully submits that Pitroda teaches "The user's signature may appear on the display of the UET card, or on the CIU, ... If the sales person is satisfied with the signature comparison, the sales person completes the transaction, and the CIU transmits completed details of the sales..." (col. 16, line 62 through col. 17, line 6) and "The CIU unit may include software capable of displaying signatures or other types of verification/identification such as photographs, finger prints..." (col. 12, lines 55-57), which is displaying the user's signature/photograph when a transaction is requested.

Pitroda fails to specifically teach or fairly suggest the user's signature/photograph is the facial image of the card bearer.

Nathans teaches an ID card having the card bearer's picture thereon to restrict access of the card bearer for authenticating purposes (see abstract; col. 2, line 5+; and col. 2, lines 35+).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to manipulate the display which displays the user's signature/photograph as taught by Pitroda to specifically displaying the user's own-facial image in order to positively identify the user through his/her image. Accordingly, such modification would have been an obvious expedient from Pitroda's teachings.

3. In response to appellant's argument that "...However, nowhere is there a suggestion in Pitroda that any operation automatically begins upon detecting the external source of power..." (page 6, the last line through page 7, line 4), the examiner respectfully requests the appellant to further review Pitroda's reference wherein Pitroda discloses that his UET card is a passive system (see col. 4, lines 22-34 and lines 61+; col. 12, lines 48-56) for activating and deactivating

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the UET card upon insertion of the UET card into the card reader. Accordingly, Pitroda meets the claimed invention of claims 31 and 32.

4. In response to applicant's argument that, "Claim 34 was further rejected based on Teicher. With all due respect, the combination of Pitroda and Nathans further in view of Teicher is an improper combination..." (page 7, lines 11-13), the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

5. In response to applicant's argument that "...Teicher does not teach raised lettering on the electronic credit card as claimed. Teicher does teach printing the numbers, and teaches that the numbers can be "embossed"..." (page 7, last 3 lines), the examiner respectfully submits that Teicher teaches "a smart card 150 ... having various markings printed thereon ... smart cards are sometimes embossed in a manner similar to that of ordinary charge cards, but the location where embossing is done ..." (col. 1, line 58 through col. 2, line 3), wherein embossed lettering serves as raised lettering. It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to employ the well-known raised/embossed lettering in the surface of the credit card as taught by Teicher to the teachings of Pitroda as modified by Nathans in order to provide a smart card with manner similar to that of ordinary charge cards (col. 2, line 1).

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,


Kimberly D. Nguyen

June 1, 2005

Conferees



Michael G. Lee



Olik Chaudhuri